# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CRIMINAL APPLICATION No. 959 of 1999

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.H.WAGHELA** Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

==========

**SIDDIK @ SADIK AHMED MALA - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

==========

**Appearance :**
MR MA KHARADI for Applicant(s) : 1,
MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

==========

**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 23/04/2007**

**ORAL JUDGMENT :**

1. The petitioner has invoked Articles 226 and 227 alongwith Articles 14, 19 and 21 of the Constitution to call into question the judgment and order dated 4.8.1999 of learned Sessions

Judge, Bharuch, in Criminal Appeal No.2 of 1998 whereby the order dated 3.1.1998 of the Deputy Conservator of Forest to confiscate tempo bearing No.GJ-7-U-8235 to the State was confirmed.

2. Learned counsel Mr.Kharadi, appearing for the petitioner, vehemently argued that, even as the provisions of section 61-B of the Indian Forest Act, 1927 (for short, "the Act"), as amended by the Gujarat Amendment Act of 1989, were applicable and applied to the facts of the case, there was no sufficient material to establish that the petitioner as the registered owner of the vehicle in question had the knowledge of or had connived at the transport of forest produce by his vehicle. He further submitted that the authorities had failed to exercise the power conferred under section 68 of the Act so as to compound the offence and release the vehicle before making the impugned order to confiscate the tempo. He fairly conceded that, during pendency of the present petition, he was permitted to make an appropriate application for compounding of the offence and that application was decided by order dated 4.2.2003 whereby the application was rejected and that order is not under challenge. As for the other contention of the offence having been committed without

knowledge or connivance of the petitioner, learned Sessions Judge appears to have clearly and rightly held that, under the provisions of section 61-B (2) of the Act, not only that the owner but his agent or the person in-charge of the vehicle had to take all reasonable and necessary precautions against use of the vehicle and the burden of proving such fact was upon the owner or such person. In the facts of the present case, it was seen from the order of the Deputy Conservator of Forest that the petitioner had practically admitted the factum of his involvement in the offence and, therefore, by no stretch, the findings of the Deputy Conservator of Forest or the learned Sessions Judge can be assailed as perverse.

3. Therefore, in the facts and for the reasons discussed in brief hereinabove, the petition is required to be dismissed and, accordingly, it is dismissed. Rule is discharged with no order as to costs.

Sd/-

***( D.H.Waghela, J.)***

*(KMG Thilake)*